



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	MNDC FF
	Tenant:	MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application was received at the Residential Tenancy Branch on September 7, 2016, and was amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on December 8, 2016 (the “Landlords’ Application”). The Landlords applied for the following relief pursuant to the *Act*:

- an order for money owed or compensation for damage or loss under the *Act*, Regulations or a tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenants’ Application is dated November 14, 2016 (the “Tenants’ Application”). The Tenants applied for the following relief pursuant to the *Act*:

- an order for money owed or compensation for damage or loss under the *Act*, Regulations or a tenancy agreement;
- an order that the Landlord return all or party of the security deposit and pet damage deposit; and
- an order granting recovery of the filing fee.

The Landlords attended the hearing on their own behalves. The Tenants attended the hearing on their own behalves and were assisted by R.B., an advocate. All parties giving testimony provided a solemn affirmation.

The Landlords testified the Landlords' Application and Notice of a Dispute Resolution Hearing were served on the Tenants by registered mail on September 22, 2016. The Tenants acknowledged receipt. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find that the Tenants are deemed to have received the Landlords' Application package and Notice of a Dispute Resolution Hearing on September 27, 2016.

In addition, the Landlord confirmed the amended application, including updated documentary evidence, received at the Residential Tenancy Branch on October 17, 2016, was served on the Tenant in person on October 17, 2016. According to the Landlord, the documents were served in the presence of a bailiff. The Tenants acknowledged receipt. I find that the Landlords' amended application and updated documentary evidence was served on the Tenants in person on October 17, 2016.

The Tenants testified their Application package was served on the Landlords by registered mail on March 2, 2017. The Landlords acknowledged receipt. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received five days later. I find the Tenants' Application package is deemed to have been received on March 7, 2017.

Neither party raised further issues with respect to service or receipt of the above documents. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. The parties, particularly the Landlords, provided extensive written submissions and documentary evidence, much of which was not relevant to the matters under consideration. All of the parties' evidence and submissions have been considered; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, Regulations or a tenancy agreement?
2. Are the Landlords entitled to recover the filing fee?
3. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, Regulations or a tenancy agreement?
4. Are the Tenants entitled to an order that the Landlord return all or part of the security deposit and pet damage deposit?

5. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed the tenancy began on July 1, 2014, and ended on May 9, 2016. Rent in the amount of \$995.00 per month was due on the first day of each month. The Tenants paid a security deposit in the amount of \$497.50.

The Landlords' Claim

The Landlords' claim was summarized on a Monetary Order Worksheet, dated December 8, 2016. First, the Landlords sought to recover a \$1,000.00 insurance deductible they claim they had to pay on account of an insurance claim arising from the Tenants' negligence. According to J.L., a flood occurred in the rental unit when a toilet overflowed on or about April 12, 2016. He attended the rental property that day to assess the damage and noted a plunger on the floor. The blockage appeared to have been removed. J.L. testified that a plumber subsequently attended and determined that the flood was caused by a blockage, although damage to the flapper valve was also noted. J.L. submitted that the damage to the flapper caused the extensive flooding because the toilet continued to flow when the blockage occurred. Further, J.L. submitted that the Tenants' failure to report the damage to the flapper valve was negligent, and that the Landlords should be entitled to recover the insurance deductible paid on account of the flooding.

In support, the Landlords submitted an invoice from a contractor, dated August 2, 2016. The invoice indicates the amount of the deductible payable by the Landlords was \$1,000.00. The Landlords also referred me to an invoice from a plumber, dated April 16, 2016. The invoice stated, in part:

Flooding caused by plugged toilet, overflowing because of leaking flapper valve in toilet tank. Had toilet not been plugged tank would have drained through toilet.

[Reproduced as written.]

In addition, the Landlords submitted that clause 42 of the tenancy agreement amounts to an indemnification with respect to damage alleged to have been caused intentionally or negligently by the Tenants, even without proof that the Tenants caused the flood. It states:

LIABILITY AND INSURANCE. *The tenant will not do, or permit to be done, anything that may void the landlord's insurance covering the residential property or rental unit, or that may cause the landlord's insurance premiums to be increased. Unless the landlord is in breach of a lawful duty, the tenant releases the landlord from any liability in connection with the use by the tenant or tenant's guests of the rental unit or the residential property.*

The Tenant agrees to carry sufficient insurance to cover his property against loss or damage from any cause and for third party liability. The tenant agrees that the landlord will not be responsible for any loss or damage to the tenants property. The tenant will be responsible for any claim, expense, or damage resulting from the tenants failure to comply with any term of this Agreement and this responsibility will survive the ending of this Agreement.

[Reproduced as written.]

Further, the Landlords emphasized the perceived importance of which insurer would be responsible for the claim.

R.B. made submissions on behalf of the Tenants in reply. Referring to the Tenants' written submissions, dated February 2, 2017, he advised the matter was settled between the parties. The settlement saw the payment of \$4,043.00 by the Tenants to the Landlords, plus the Landlords were permitted to retain the security deposit. R.B. referred to an email from J.L. to H.M., dated May 13, 2016, a copy of which was submitted with the Landlords' documentary evidence, in which J.L. stated:

Your offer of \$4043.00 would resolve the issues regarding the May rent, the carpets, fridge, door and light fixture.

...

Again we thank you for offering restitution Please provide us with a money order of bank draft on Tuesday for \$4043.00 so that we can bring closure to this unfortunate saga.

[Reproduced as written.]

In the email exchange The Tenants' written submissions set out their position with respect to the settlement succinctly: "It is difficult to imagine plainer language evincing an intention to enter a comprehensive settlement." I note the Landlords did not deny the settlement was made as claimed by the Tenants. Rather, the Landlords submit the settlement did not include the impact of the flood on their insurance deductible and premiums.

The Tenants deny they were negligent and submit there is insufficient evidence to the contrary. The Tenants referred to a statutory declaration, provided by their insurance adjuster, which stated: "I was unable to explicitly or inferentially find fault with the tenants for the flood."

On behalf of the Tenants, R.B. also submitted that the loss was a loss of the strata corporation, not of the Landlords.

Second, the Landlords claimed \$702.00 for an increase to their insurance premium. In support, J.L. referred to an email from their insurance agent, dated August 22, 2016, which advised that the Landlords would "be eligible again for the claims free discount of 15% on the March 30, 2020 renewal, subject to no further losses and subject to no change in the package terms and discount offerings." However, J.L. testified that this amount was determined using a calculation that no longer applied. Further, he acknowledged that he does not know the exact financial impact of the insurance claim on future premiums.

Third, the Landlords applied for \$15,000.00 for aggravated damages. J.L. testified there are several grounds for the claim, which may be summarized as follows:

- The Tenants secured the tenancy under "false pretences." Specifically, that the Tenants represented they intended to reside at the property at least part time. However, according to J.L., the Tenants' son resided there and caused extensive damage.
- In August 2015, during a routine condition inspection, the Tenants were advised they were violating the tenancy agreement and instructed to restore the rental unit to its previous condition, which they did not do.

- The Tenants' son, in their absence, moved others into the rental unit, precluding the Landlords from negotiating further rent increases.
- The Tenants' son was negligent in failing to advise the Landlords about the faulty flapper valve.
- Section 32(3) of the *Act* required that the Tenants repair damage to the rental unit and that the settlement was not sufficient to address the damage.
- The Tenants' cross-application is vexatious.
- That correspondence from the Tenants' advocate, sent on a "without prejudice" basis, was an attempt to force the Landlords to provide evidence in support of the Tenants' claim.
- That an alleged claim the Tenants were unaware of their legal rights is "absurd" because the first time L.T. contacted the Tenants was in response to a settlement offer made by the Tenants.
- The Tenants' claim is based on a hope that the Landlords are too busy dealing with personal matters that they will not pursue their claim.
- The Tenants' claim is vexatious in that it is based on facts fabricated by the Tenants.

In reply, R.B. again referred to the Tenants' written submissions, dated February 2, 2017, in which the Tenants suggest the Landlords have placed a "sinister spin" on the Tenants' actions, and that a claim for aggravated damages is not made out.

The Tenants' Claim

The Tenants submit that issues arising from the tenancy were resolved upon payment of \$4,043.00, referred to above. According to R.B., this was the "price of peace" between the parties. However, the Tenants submitted that if the settlement was not a "complete settlement", the Tenants should be entitled to recover the monies paid to the Landlords.

The Tenants claim to recover \$3,848.00 was calculated as follows:

Settlement payment:	\$4,043.00
LESS outstanding rent:	(\$995.00)
PLUS aggravated damage claim:	\$800.00
TOTAL:	\$3,848.00

The Tenants provided written submissions with respect to the aggravated damages claim, which stated:

...the bases for such claim are, inter alia, (i) the landlord's failure to allow the insurance claim to be decided as between the parties' insurance adjusters...(ii) the landlord's decision to pursue the tenants...despite a representation in writing that they were released from further liability; (iii) gross overreaching by the landlord, demanding that the tenants replace a fridge, carpets and a light fixture in the premises for new, allowing nothing for depreciation...

[Reproduced as written.]

In addition, the Tenants submitted the Landlords accusations justify an aggravated damages award. They submitted the Landlords accused the Tenants and their advocate of various actions, including being deceptive, dishonest, dishonourable, having used "false pretences", and destroying evidence.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on each party advancing a claim to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement. Once that has been established, the party must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the party did what was reasonable to minimize the damage or losses that were incurred.

The Landlords' Claim

With respect to the Landlords' claim to recover the \$1,000.00 insurance deductible, I accept the amount of the insurance deductible paid by the Landlords was \$1,000.00. However, I find there is insufficient evidence before me to conclude the flooding, which appeared to have been the result of a broken "flapper", was caused by the Tenants' negligence, or that the Tenants were negligent in failing to report the problem. There are several reasons for making these findings. Email correspondence submitted by the Landlord confirms the Landlords were aware of plumbing issues before the flood on April 12, 2016. In an email dated April 8, 2016, the Landlords' agent, J.G., sent an email to J.L. as follows:

So still having major issues with the toilets in the house not sure what the problem is. The bedroom one seems to be the worst and the downstairs one has a broken part in it now and has to have to top off so we can flush it. The boys next door have had one of their toilets running for the last week so I presume they are having issues as well.

[Reproduced as written.]

These exchanges confirm the Landlords were aware of plumbing issues before the flood occurred, were taking steps to address them, and suggest the issues were not only in the Tenants' rental unit.

Based on the evidence before me, the flooding could have just as easily been a result of pre-existing issues with the plumbing as by the Tenants' negligence.

For clarity, it is worth noting that, even if I had found the settlement did not include the impact of flooding on the Landlords' insurance deductible and premiums, my finding with respect to negligence (or lack thereof) would preclude recovery by the Landlord.

With respect to the Landlords' claim for \$702.00 on account of anticipated increases to insurance premiums, I have found there is insufficient evidence before me to conclude the flooding was caused by the Tenants' negligence. However, even if I had found the flooding was caused by the Tenants' negligence, there was insufficient evidence before me to calculate the amount of the increase with any certainty. The Landlords acknowledged the difficulty in calculation during the hearing.

With respect to the Landlords' claim for \$15,000.00 in aggravated damages, Policy Guideline #16 is of assistance. It states:

"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

[Reproduced as written.]

In this case, I find there is insufficient evidence before me to conclude the Landlords are entitled to a monetary award for aggravated damages. I find the losses claimed by the Landlords were capable of being fully compensated by money. In fact, the Landlords were compensated for their losses, in part, through the settlement payment. Further, Policy Guideline #16 confirms aggravated damages should be awarded rarely, and I find this is not an appropriate circumstance to award aggravated damages.

The Landlords' Application is dismissed, without leave to reapply.

The Tenants' Claim

As confirmed by R.B. during the hearing, the bulk of the Tenants' claim was, in effect, a request for reimbursement of the settlement payment made by the Tenants, if the Landlords were granted the relief they sought, plus a claim for aggravated damages. The calculation of the Tenants' claim as set out above was confirmed by R.B. during the

hearing. The Landlords have not been successful, in part because I have found it to be more likely than not that the settlement payment included flood damage. Accordingly, I find there is insufficient evidence before me upon which to award the return of the settlement payment to the Tenants.

With respect to the Tenants' claim of \$800.00 for aggravated damages, I find there is insufficient evidence before me to conclude the Tenants are entitled to this relief. There are clearly hard feelings on both sides of this dispute, but I find the allegations of dishonesty and "false pretences" have not resulted in significant damage or loss to the Tenants.

The Tenants' Application is dismissed, without leave to reapply.

Conclusion

The Landlords' Application is dismissed, without leave to reapply.

The Tenants' Application is dismissed, without leave to reapply.

As neither party has been successful, I decline to grant recovery of the filing fees.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 8, 2017

Residential Tenancy Branch